

PATENT  
P57032**REMARKS**

This Amendment is in response to the Office action (Paper No. 20081026) mailed on 31 November 2008. Re-examination and reconsideration are respectfully requested.

**Listing of The Claims**

Pursuant to 37 CFR §121(c), the claim listing, including the text of the claims, will serve to replace all prior versions of the claims, in the application.

**Status of The Claims**

Claims 1-39 are pending in the application.

Claims 1-8, 13, 17, 18 and 21-38 are allowed.

**Amendment of The Claims**

Claims 1, 6, 9, 10, 13-16, 19, 25-27, 31 and 39 are amended.

**Amendment of The Specification**

Paragraph [0317] is amended in response to the Examiner's rejection under 35 U.S.C. §101.

**Issues Raised by Paper No. 20081026****Claim Rejections - 35 U.S.C. §112**

Claims 9-12, 14-16, 19-20 and 39 are rejected under 35 U.S.C. §112, second paragraph, as

PATENT  
P57032

being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant amended claims 9, 14, 19 and 39 in order to overcome the Examiner's rejections under 35 U.S.C. §112.

### **Claim Rejections - 35 U.S.C. §101.**

Claims 14-16 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

The Examiner rejected claims 14 through 16 under 35 U.S.C. §101 by erroneously asserting that the claimed invention is directed to non-statutory subject matter by stating that the previously presented paragraph [0317] defines the claimed medium as encompassing statutory media such as ROM and RAM as well as non-statutory subject matter such as carrier waves and wireless media (radio frequency, infrared microwaves, and wired media).

The applicant disagrees with the Examiner's assertion. It should be noted that only paragraph [0317] generally states the claimed computer readable media, in the amended paragraph [0317], the applicant clearly states that:

**"The computer-readable storage media include for example and is not limited to storage media, such as magnetic storage media (e.g., ROMs, floppy disks, hard disk, and the like), optical reading media (e.g., CD-ROMs (compact disc-read-only memory), DVDs (digital versatile discs), re-writable versions of the optical discs, and the like),**

PATENT  
P57032

hybrid magnetic optical disks, organic disks, system memory (read-only memory, random access memory), non-volatile memory such as flash memory or any other volatile or non-volatile memory, and other semiconductor media, electronic media, electromagnetic storage media and infrared storage media.”

In other words, carrier waves and wireless media (radio frequency, infrared microwaves, and wired media) are not included in the computer-readable storage media.

MPEP §2106.01 states that:

“Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure’s functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory.”

Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical “things.” They are neither computer components nor statutory processes, as they are not “act” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035. (Emphasis Added)”

PATENT  
P57032

Therefore, it is possible for a computer program to be considered statutory subject matter, but it apparently must be embodied in a "physical thing". The amended paragraph [0317] accurately defines a computer-readable storage media including statutory subject matters.

The applicant defines in amended paragraph [0317] that:

"The data stored in the computer-readable media may be transmitted via a communication medium such as carrier waves (e.g., transmission via the Internet or another computer). The transmission paths of [[a]] the communication medium generally carry computer-readable instructions, data structures, program modules or other data in a modulated signal such as the carrier waves or other transportable mechanism including any information delivery media. Computer-readable data stored on the computer-readable storage media may also be transmitted via wireless media such as radio frequency, infrared microwaves, and through wired media such as a wired network."

As mentioned in the amended paragraph [0317], the communication medium, the transmission paths of the communication medium and the transmission wired/wireless media for data communication may be carrier waves, radio frequency, infrared microwaves, and wired media. The applicant's claims 14 through 16, however, do not claim any communication medium or transmission paths of the communication medium. In fact, the applicant's claims 14 through 16 define computer-readable storage media encoded by computer-executable instructions, the computer-readable storage media realizing the computer-executable instruction's functionality, and the computer-readable storage media including statutory subject matters as defined in the amended paragraph [0317].

Therefore, the applicant respectfully requests the Examiner withdraw the rejection under 35 U.S.C. §101.

PATENT  
P57032**Allowable Subject Matter**


Claims 1-13, and 17-39 are allowed because the prior art of record fail to disclose or render obvious the method and apparatus as claimed.

The applicant acknowledges the Examiner's allowance to claims 1-13 and 17-39 with appreciation.

In view of the foregoing amendments and remarks, all claims are deemed to be allowable and this application is believed to be in condition to be passed to issue. If there are any questions, the examiner is asked to contact the applicant's attorney.

No fee is incurred by this Amendment.

Respectfully submitted,

  
Robert E. Bushnell  
Attorney for the Applicant  
Registration No.: 27,774

2029 "K" Street N.W., Suite 600  
Washington, D.C. 20006  
(202) 408-9040  
Folio: P57032  
Date: 12/23/08  
I.D.: REB/XL